

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10418 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ARVINDBHAI CHHOTABHAI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 10418 of 2003
MR YF MEHTA for HL PATEL ADVOCATES for Petitioner No. 1
MR RM CHAUHAN A.G.P. for Respondent No. 1-2,4
MS PJ DAVAWALA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the
petitioner has challenged the order of detention passed

by the District Magistrate, Kheda at Nadiad in exercise of powers vested in it by sub-section 2 of Section 3 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "P.B.M. Act"), directing the detention of the petitioner and in pursuance of the said impugned order, the petitioner came to be detained on 18.06.2003. The order which is impugned in this petition is dated 17.06.2003.

2. The ground placed on the record and served upon the detenu reveal that the detenu petitioner is a Secretary of Baladha Co-operative Society Ltd., and in turn the said Co-operative Society is issued with the license and necessary permission to run a fair price shop. During the period from 31.05.2003 to 10.06.2003, the Mamlatdar Thasra, checked the records of the said Co-operative Society in respect of the fair price shop. In such checking, the Mamlatdar found that the detenu sold the bulk of blue kerosene to the extent of 2753 liters through bogus bills. The petitioner also disposed of bulk of wheat to the extent of 2097.5 Kgs., which were meant to be distributed free to the labourers working on scarcity work and thereby, has committed illegality. It was alleged that wheat and rice which were to be distributed to the ration card holders on subsidize rates, were sold by bogus bills, while the ration card holders did not receive their share. It was alleged that this bulk of kerosene, wheat and rice was sold by the petitioner in open market at higher price. After recording the statement of the petitioner, after drawing panchnama and seizing the record, the impugned order came to be passed by the detaining authority on 17.06.2003.

3. Learned advocate Mr.Y.F. Mehta for H.L. Patel advocates for the petitioner, learned A.G.P. Mr.R.M. Chauhan for respondents nos.1, 2 and 4 and Ms.P.J. Davawala learned Standing Counsel for the Central Government for respondent no.3 were heard at length. The affidavit-in-reply filed by the detaining authority and by the Government through the Deputy Secretary, is placed on record by the learned A.G.P. as well as affidavit-in-reply filed by the Under Secretary, Consumer Affairs, Food and Public Distribution Department, Central Government is placed on record by learned Additional Standing Counsel, and the said affidavits are also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted on behalf of the respondents, it appears that the matter is required to be

disposed of on the ground that whether right of the petitioner for effective representation is affected or not. The facts reveal that during checking, the authority of supply department recorded statements of the ration card holders and other persons. Those statements were found part of the material placed before the detaining authority. To reach to subjective satisfaction about the detention of the petitioner, a copy of the said documents are served and tendered to the petitioner, but as shown by the learned advocate for the petitioner, those copies are typed copies. The original statements undoubtedly bears the signature or a thumb mark, as the case may be, of the persons whose statement is recorded. While in typed copies given to the petitioner, it is mentioned that either signed by the person or a left hand or right hand thumb impression is placed below the statement. In this respect vide his representation dated 24.06.2003 and received and dealt with by the Government in the said representation, it has been specifically mentioned that the statements recorded by the authority are not statements of the correct persons. Signature in the original, according to the petitioner was of some other persons purported to have stated before the authorities. Therefore, it was requested by the petitioner that he be supplied with the xerox copy of such statements, to make effective representation whether the statements of ration card holders and other persons were correct or not. While going through the affidavit of the Government it is found that the concerned authority was pleased to reject the representation of the petitioner. However, it reflects that the vital point which was raised by the petitioner has not been dealt with by the concerned authority. In this view of the matter, undoubtedly, right of the petitioner for effective representation under Article 22 (5) of the Constitution of India is breached and further detention of the petitioner is bad in law. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed on this ground alone.

In the result, this Special Civil Application is allowed with no order as to costs. The impugned order in this Special Civil Application passed by the District Magistrate, Kheda at Nadiad, on 17.06.2003 in exercise of powers under Section 3 (2) of the P.B.M. Act against the petitioner is quashed and set-aside. It is directed that the petitioner be set at liberty immediately if he is not required to be detained in jail for any other purpose. Rule is made absolute.

[J.R. VORA, J.]

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